



Multistate Tax Commission Memorandum

States Working Together Since 1967 . . . To Preserve Federalism and Tax Fairness

To: Joan Wagnon, Chair
Members of the Commission

From: Shirley Sicilian, General Counsel

Date: August 3, 2006

Subject: Proposed Model Affiliate Nexus Statute - Executive Committee Action and Bylaw
7 Survey Results

Attachment: Proposed Model Affiliate Nexus Statute

I. Executive Committee Action

On November 11, 2004, the Multistate Tax Commission Executive Committee approved for public hearing the Proposed Model Affiliate Nexus Statute. Public hearings were held in January, 2005 and March, 2005 in Oakland, CA and Washington, D.C., respectively. A Preliminary Hearing Officer's Report was filed in April, 2005. At its April, 2005 meeting, the Executive Committee voted to refer the Proposal to the Full Commission, with amendments as recommended by the Hearing Officer.

II. Bylaw 7 Survey

The Bylaw 7 Survey regarding the proposed model statute was sent to the Compact Member States. A majority of the affected Compact member states have responded affirmatively to the surveys, indicating that they would consider adoption of the draft proposals. Thus, the matters may be referred to the full Commission for a vote and possible adoption as a uniformity recommendation.

(Attachment)

Proposed Model Affiliate Sales Tax Nexus Provision

April 28, 2005

As approved by the MTC Executive Committee for Bylaw 7 Survey

A. An out-of-state vendor has substantial nexus with this State for the collection of use tax if both of the following apply:

- (1) the out-of-state vendor and an in-state business maintaining one or more location within this State are related parties; and
- (2) the out-of-state vendor and the in-state business use an identical or substantially similar name, tradename, trademark or goodwill to develop, promote, or maintain sales, or the in-state business provides services to, or that inure to the benefit of, the out-of-state business related to developing, promoting, or maintaining the in-state market.

B. Two entities are related parties under this section if they meet any one of the following tests:

(1) both entities are component members of the same controlled group of corporations under section 1563 of the Internal Revenue Code;

(2) one entity is a related taxpayer to the other entity under the provisions of section 267 of the Internal Revenue Code;

(3) one entity is a corporation and the other entity and any party, for which section 318 of the Internal Revenue Code requires an attribution of ownership of stock from that party to the entity, own directly, indirectly, beneficially, or constructively at least 50 percent of the value of the outstanding stock of the corporation; or

(4) one or both entities is a limited liability company, partnership, estate, or trust, none of which is treated as a corporation for federal income tax purposes, and such limited liability company, partnership, estate, or trust and its members, partners or beneficiaries own in the aggregate directly, indirectly, beneficially, or constructively at least 50 percent of the profits, capital, stock, or value of the other entity or both entities.

C. The provisions of this [statute] [regulation] shall not apply to an out-of-state vendor that had sales in this State in the previous year in an amount of less than \$100,000.